

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FABRIENNE ENGLISH,

Plaintiff,

v.

APPLE INC, et al.,

Defendants.

Case No. 14-cv-01619-WHO

**ORDER REGARDING SEALING OF
MOTION FOR CLASS
CERTIFICATION**

Re: Dkt. Nos. 180, 182, 183, 186, 187, 197

Between July 1, 2015 and July 14, 2015, plaintiff made six separate filings in connection with her motion for class certification, all filed as exhibits to various administrative motions to file under seal. *See* Dkt. Nos. 180, 182, 183, 186, 187, 189. On July 1, 2015, she moved to seal the entire motion for class certification and all of its supporting exhibits. Dkt. No. 180. The next day, she filed a “corrected” motion to seal, along with six “corrected” exhibits. Dkt. Nos. 182, 183. A week later, on July 9, 2015, she filed a second “corrected” motion to seal, along with a “corrected” version of her class certification motion. Dkt. No. 186. On July 10, 2015, she filed a third “corrected” motion to seal, accompanied by an “errata” to the “corrected” version of the class certification motion. Dkt. No. 187. Finally, on July 14, 2015, she filed yet another “corrected” motion to seal, this time accompanied by two “corrected” expert reports. Dkt. No. 189.¹

Plaintiff does not identify any confidential information concerning herself or other putative class members in the motion for class certification or its supporting exhibits. She nevertheless seeks to seal the entire motion and all of its exhibits “out of respect for Apple’s sensitive trade position, [in] the interest of promoting an amicable resolution, in consideration of how important

¹ On July 16, 2015, at Apple’s request, I issued an order prohibiting plaintiff from making any further supplemental filings in support of her motion for class certification without prior leave of the Court. Dkt. No. 194.

one's reputation is, and to promote good relations with Apple." Dkt. Nos. 180, 189.

Apple correctly construed plaintiff's sealing request as governed by Civil Local Rule 79-5(e), which applies where the party moving to seal "seek[s] to file under seal a document designated as confidential by the opposing party or a nonparty pursuant to a protective order, or a document containing information so designated by an opposing party or a nonparty." Civil L.R. 79-5(e). After receiving an extension of time, Dkt. Nos. 184, 185, Apple filed its declaration in support of sealing pursuant to Civil Local Rules 79-5(e)(1) and 79-5(d)(1)(A) on July 20, 2015. Dkt. No. 197.

Apple seeks to seal two categories of documents. First, Apple seeks to seal in their entirety those documents that have been supplanted by plaintiff's various "corrected" or other amended filings. Dkt. No. 197 at 1. Those documents are no longer material to this case, and this first request is GRANTED.

Apple also seeks to seal various portions of the most recent versions of the motion for class certification and its exhibits. Apple identifies four categories of information for sealing: (1) information concerning its remanufacturing and testing processes; (2) information concerning its internal training materials; (3) information concerning its sales and service numbers; and (4) information concerning its databases and data capabilities. Vyas Decl. ¶¶ 2-13 (Dkt. No. 197-9).

With respect to each of the four categories, Apple offers essentially the same justification for sealing – i.e., that the information is confidential, and that its disclosure "would pose a substantial risk to Apple's interests and could adversely impact Apple's ability to compete in the future," because competitors could model their own business operations after Apple's or otherwise use the information to "unfairly compete" with Apple. *Id.* ¶¶ 4, 7, 10, 13.

"The Ninth Circuit has not ruled as to whether a motion for class certification is a dispositive motion for the purposes of determining whether the compelling reasons standard applies" to a sealing request. *Ramirez v. Trans Union, LLC*, No. 12-cv-00632-JSC, 2014 WL 1677815, at *2 (N.D. Cal. Apr. 28, 2014) (internal quotation marks omitted). Although courts in this district generally treat motions for class certification as nondispositive, they have also recognized that "there may be circumstances in which a motion for class certification is case

dispositive,” for example, where the “denial of class status means that the stakes are too low for the named plaintiffs to continue the matter.” *In re High-Tech Employee Antitrust Litig.*, No. 11-cv-02509-LHK, 2013 WL 163779, at *2 n.1 (N.D. Cal. Jan. 15, 2013) (internal quotation marks omitted); *see also Dugan v. Lloyds TSB Bank, PLC*, No. 12-cv-02549-NJV, 2013 WL 1435223, at *1 (N.D. Cal. Apr. 9, 2013) (“Unless the denial of a motion for class certification would constitute the death knell of a case, the vast majority of courts within this circuit treat motions for class certification as nondispositive motions to which the good cause sealing standard applies.”) (internal quotation marks and alterations omitted).

Here, plaintiff’s individual damages claims are sufficiently limited that it is not plausible that she would continue to litigate the case if certification is denied. Accordingly, I find that the compelling reasons standard applies. *See Herskowitz v. Apple, Inc.*, No. 12-cv-02131-LHK, 2014 WL 3920036, at *2 (N.D. Cal. Aug. 7, 2014) (applying compelling reasons standard to documents filed in connection with class certification motion where named plaintiff’s limited individual damages claims “strongly suggest that the stakes of this case following the Court’s denial of class certification are now too low for the named plaintiffs to continue the matter”) (internal quotation marks omitted).

Under that standard, a party seeking to seal materials must identify “compelling reasons supported by specific factual findings . . . that outweigh the general history of access” to judicial records. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (internal quotation marks, citations, and alterations omitted). “This presumption of access may be overcome only on the basis of articulable facts known to the court, not on the basis of unsupported hypothesis or conjecture.” *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995) (internal quotation marks omitted). In general, compelling reasons sufficient to justify sealing exist when the materials “might have become a vehicle for improper purposes, such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets.” *Kamakana*, 447 F.3d at 1179 (internal quotation marks omitted). But “[t]he mere fact that the production of records may lead to a litigant’s embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court to seal its records.” *Id.*

In addition, under this district's civil local rules, "[a] sealing order may issue only upon a request that establishes that the document, or portions thereof, are privileged, protectable as a trade secret, or otherwise entitled to protection under the law." Civil L.R. 79-5(b). The sealing request must also be "narrowly tailored." *Id.*

With these principles in mind, I rule as follows:

Information Concerning Apple's Remanufacturing and Testing Processes

Dkt. No.	Exhibit No.	Document Name	Portions Identified for Sealing	Ruling
186-1	N/A	Motion for Class Certification	4:19-21 9:1-3 12:6-9	DENIED
180-8	3	Lanigan Depo.	27:1-25 28:1-8, 24-25 93:1-2, 4-25 94:1-25 105:1-3, 15, 18 160:1-2, 5-13, 22-25 161:1-10, 12-13, 15-25 163:1-23 167:1-4, 7-8, 11-25 168:1-25 169:1-20 171:11-25 177:17-25 215:1-2, 5-7, 9-11, 13, 17-22, 24-25 216:1-2, 4-9, 13-24 220:1-15 221:3-4, 7-18, 20-25 225:1-4, 6-11 226:24-25 227:1-14, 16-25 272:9-15, 20-21 273:7-13, 16-17, 19-25 274:1-14, 18-20, 22-24	DENIED
180-23	18	Dixon Decl.	2:7-28 3:1-8.5, 12-14.5	DENIED

Information Concerning Apple's Internal Training Materials

Dkt. No.	Exhibit No.	Document Name	Portions Identified for Sealing	Ruling
186-1	N/A	Motion for Class Certification	10:26-28 11:1-5 12:24-27 13:5-10	DENIED
183-5	19	Reed Decl.	4:10-12	DENIED

1	180-25	20	Apple Products and Services: Apple Retail Training Core Training Facilitator Guide	All	CONDITIONALLY GRANTED
2					
3					
4	183-6	21	Ramos Decl.	3:11-13	DENIED
5	180-27	22	Apple Services: Market Core Training Facilitator Guide	All	CONDITIONALLY GRANTED
6					
7	180-28	23	Core Training Facilitator Guide: Apple Products and Services	All	CONDITIONALLY GRANTED
8					
9	180-29	24	Louise: AppleCare+ Timeline Updates: Black Project	All	CONDITIONALLY GRANTED
10					
11	180-34	29	AOS Learning: Selling the AppleCare Protection Plan Facilitator's Guide	All	CONDITIONALLY GRANTED
12					
13	180-35	30	Training Activity	All	CONDITIONALLY GRANTED
14					
15	180-36	31	Training Materials and Test Questions	All	CONDITIONALLY GRANTED
16					
17	180-38	33	Apple Products	All	CONDITIONALLY GRANTED
18	180-39	34	AppleCare+ Enroll at Time of Incident	All	CONDITIONALLY GRANTED
19					
20	180-40	35	AppleCare+ Enroll Within 30 Days of Purchase	All	CONDITIONALLY GRANTED
21	180-41	36	Positioning AppleCare+ in the Family Room	All	CONDITIONALLY GRANTED
22					
23	180-42	37	APL00000791	All	CONDITIONALLY GRANTED
24	<u>Information Concerning Apple's Sales and Service Numbers</u>				
25	Dkt. No.	Exhibit No.	Document Name	Portions Identified for Sealing	Ruling
26	186-1	N/A	Motion for Class Certification	10:13 18:7-9	CONDITIONALLY GRANTED
27					
28					

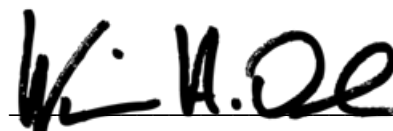
180-31	26	Defendant Apple Inc.'s Highly Confidential Responses to Plaintiff's Interrogatories, (Set Two)	4:19 5:12 6:10 7:5	CONDITIONALLY GRANTED
<u>Information Concerning Apple's Databases and Data Capabilities</u>				
Dkt. No.	Exhibit No.	Document Name	Portions Identified for Sealing	Ruling
186-1	N/A	Motion for Class Certification	9:20.5-27.5 10:1-2 17:28.5 18:1	DENIED
180-10	5	Morrison Depo.	67:5-11 71:14-18 79:16 170:17-20	DENIED

Because it appears that at least some of the denied sealing requests listed above are merely overbroad and/or concern information that could be sealable upon a proper showing, I will deny the requests without prejudice. Apple may file a revised declaration narrowing its sealing requests and/or articulating specific reasons justifying those requests within seven days of the date of this order. If Apple does not do so, the materials will be unsealed.

In addition, as the motion for class certification is not yet fully briefed, it is not yet clear what information will be material to resolution of that motion. Accordingly, certain of the sealing requests listed above are granted conditionally, subject to reconsideration once the motion for class certification has been fully briefed and argued. I rule on the sealing requests now to provide the parties some guidance on what constitutes sealable information in this case.

IT IS SO ORDERED.

Dated: August 6, 2015


 WILLIAM H. ORRICK
 United States District Judge